

# Notice of Allowability

Application No.

09/923,723

Examiner

Amanda H Merlino

Applicant(s)

HOLDEN, JAMES M.

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to rice filed 6/16/04.
2. ☒ The allowed claim(s) is/are 1-17 and 20-27.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

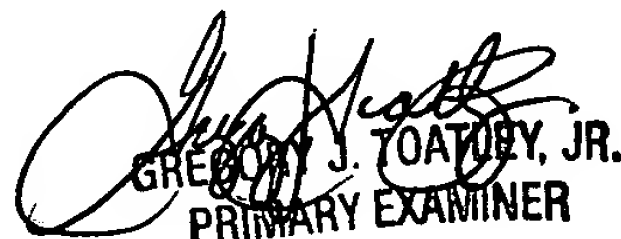
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☒ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date 8/26/04
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
GREGORY J. TOATLEY, JR.  
PRIMARY EXAMINER

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Michael J. Halbert on 8/26/04.

The application has been amended as follows:

- a) on line 12 of claim 11, "selectively" has been added before "position";
- b) on the first occurrence of claim 26, "26" has been replaced by "25".

### **REASONS FOR ALLOWANCE**

The following is an examiner's statement of reasons for allowance:

As to claims 1-8 and 23, the prior of record, taken alone or in combination, fails to disclose or render obvious an optically measuring characteristics of a sample comprising means for positioning each of a sample held on said sample support, said reflective element, or both said sample held on said sample support and said reflective element within a collection range, in combination with the rest of the limitations of claim 1. With reference to means for language, applicant invoked 35 U.S.C. 112, sixth paragraph wherein the means for language is construed to cover the corresponding structure in described in the specification and equivalents thereof.

As to claims 9-10 and 24-25, the prior of record, taken alone or in combination, fails to disclose or render obvious an apparatus for measuring characteristic of a sample comprising an actuator for moving the sample support or the reflective element upstream and downstream in the optical path, in combination with the rest of the limitations of claim 9.

As to claim 11 and 26, the prior of record, taken alone or in combination, fails to disclose or render obvious an apparatus for optically measuring characteristic of a sample comprising an aperture stop in said optical path before said light detector, wherein at least one of said lens elements and said aperture stop are adjusted to alter a collection range to selectively position a sample held on said sample support, said reflective element, or both said sample held on said sample support and said reflective element within said collection range, in combination with the rest of the limitations of claim 11 .

As to claims 12-17, 20-22, and 27, the prior of record, taken alone or in combination, fails to disclose or render obvious a method for measuring a characteristic of a sample comprising the step of selectively configuring a collection range to include said sample, said reflective element or both said sample and said reflective element, in combination with the rest of the limitations of claim 12.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

## DRAWINGS


Formal drawings are required in this application in reply to this Office action to avoid abandonment of the application.

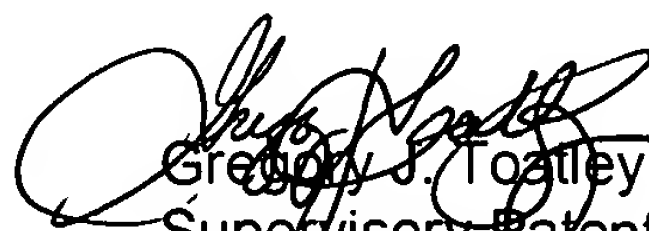
## Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda H Merlino whose telephone number is 571-272-2421. The examiner can normally be reached on Monday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J Toatley, Jr. can be reached on 571-272-2800 ext 77. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Amanda H Merlino   
Patent Examiner  
Art Unit 2877  
August 26, 2004

  
Gregory J. Toatley, Jr.  
Supervisory Patent Examiner